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Evaluation of the Military Criminal Investigative Organizations' Investigative Effectiveness Regarding U.S. Forces Civilians Stationed Overseas

Executive Summary

Introduction. Approximately 299,000 civilians and dependents currently accompany the Armed Forces overseas. Generally, the United States has no criminal law jurisdiction over U.S. civilians or dependents of civilian and military personnel when they accompany the Armed Forces overseas. Serious criminal acts committed by these American civilians are usually investigated by the Military Criminal Investigative Organizations (MCIOs).¹ The MCIOs conducted over 1,900 investigations involving allegations of serious offenses committed by American civilians overseas from 1995 through 1997.

Objective. Our primary objective was to evaluate Department of Defense and the Military Criminal Investigative Organizations' authorities, policies, and procedures for conducting criminal investigations involving civilians who accompanied U.S. Forces stationed overseas. The evaluation also focused on the effectiveness of interaction among the Military Criminal Investigative Organizations, Department of Defense officials, military commanders, and host nation authorities in support of MCIO investigations of civilians supporting U.S. Forces overseas.

Results. The Military Criminal Investigative Organizations conduct effective investigations of U.S. Forces civilians stationed overseas who commit serious crimes. In addition, working relationships and communications with host nation authorities are in place and appear to be effective (Finding A). Although

¹ The MCIOs are the U.S. Army Criminal Investigation Command; the Air Force Office of Special Investigations; and the Naval Criminal Investigative Service, which services the Navy and the Marine Corps. The MCIOs are responsible for investigating most major crime in the Military Departments, including general crimes and fraud. Initiation of investigations by the MCIOs is authorized by DoD Instruction 5505.3, "Initiation of Investigations by Military Criminal Investigative Organizations," July 11, 1986.

investigators dedicate significant time and resources to the investigation of crimes committed by U.S. civilians overseas, these investigations rarely result in a criminal prosecution due to the lack of prosecutive jurisdiction by the United States Government. On April 18, 1997, a Joint Overseas Jurisdiction Advisory Committee submitted a report to Congress addressing criminal law jurisdiction over civilians accompanying the Armed Forces overseas. The report recommends and provides legislative changes to close jurisdictional gaps with respect to civilians accompanying the Armed Forces overseas. Our evaluation determined that a significant number of serious² offenses committed by U.S. civilians stationed overseas are not being reported to the Congress (Finding B). This is because DoD Directive 5525.1, "Status of Forces Policies and Information," which sets forth reporting requirements on U.S. civilians stationed overseas is limited to cases reserved by a foreign country and those cases released by foreign authorities to the U.S. for disposition. Not included are serious cases investigated by the Military Criminal Investigative Organizations in which the host country had no interest or which were not referred or reported to the host country. As a result, Congress is unaware of the actual amount of serious crime committed under these circumstances and cannot take such information into consideration to effect legislative decisions.

During this evaluation we interviewed commanders and other personnel having official interest in misconduct committed by U.S. civilians overseas. They expressed concern over the inadequacy of administrative sanctions and the amount of time and resources committed to programs that deal with civilian misconduct. Although these issues were beyond the scope of this evaluation, civilian misconduct programs overseas may warrant further study. At Appendix A is an observation on this subject.

Summary of Recommendation. We recommend that the DoD General Counsel, as the proponent for DoD Directive 5525.1, "Status of Forces Policy and Information," modify annual reporting requirements to include all MCIO investigations of founded,³ serious offenses committed by civilians stationed overseas.

Management Comments. The Army, Navy, Air Force, and United States Forces, Japan (USFJ) comments are responsive to the finding on the overall

² For purposes of this report, serious crimes include: murder, rape, manslaughter & negligent homicide, arson, robbery & related offenses, aggravated assault, child abuse, drug distribution and drug possession with intent to distribute.

³ For purposes of this report, a founded offense is defined as a criminal offense adequately substantiated by a MCIO investigation.

investigative sufficiency, liaison and working relationships with host country counterparts reflected in the evaluation report. The Army, Navy, and Air Force concurred with Finding B regarding a lack of a mechanism for reporting serious founded offenses investigated by the Military Criminal Investigative Organization in which the host country has no interest or which were not referred/reported to the host country. The USFJ stated that reporting of serious founded offenses in which the host country has no interest or which were not referred or reported to the host country are reported using the Defense Incident-Based Reporting System. Although the Army concurred in Finding B, they noncurred in the recommendation to modify the reporting requirements of DoDD 5525.1. The Army stated that the Secretary of the Army is designated the Executive Agent only for maintaining and collating information received on the basis of reports submitted in accordance with DoDD 5525.1 and has not been given the authority to establish, as a matter of DoD policy, new reporting requirements. See Part I for a discussion of management comments and Part III for the complete text of the management comments.

Evaluation Response. We believe that the concurrences by the Army, Navy, and Air Force on the lack of reporting data on serious crimes committed overseas by civilians accompanying the U.S. Forces identified in this report reflect the valid need for this data to be reported to the Congress. As a result, we have revised and redirected Recommendation B to the Department of Defense General Counsel.